

## HUMAN SERVICES BOARD

## INTRODUCTION

## FINDINGS OF FACT

3. PATH denied the request in October saying that the child's condition was not severe enough to meet Medicaid

standards for payment. The petitioner appealed that decision on November 1, 2003.

4. The matter was set for hearing for November 21, 2002, at which time PATH explained to the petitioner why it felt her condition was not severe. The petitioner was told that PATH's consultant had measured the models provided by the orthodontist and had concluded that the crowding was only 7-8 mm. The petitioner told PATH that in addition to the crowding, her daughter was complaining of pain. The petitioner was advised to get a further detailed opinion from the treating orthodontist about the measurements and the child's pain.

5. On December 3, 2002, the child's orthodontist wrote a letter to PATH indicating that he had met with the child that day and that she has complained of pain in the upper teeth due to her crowding. Following another scheduled hearing on December 19, 2002, the petitioner said she would get more specific information from her child's orthodontist on the measurement and pain situation.

6. January 21, 2003, the petitioner provided a letter from her child's treating orthodontist which stated that his measurements indicated that the crowding was 10-11 mm as of May 28, 2002 but he agreed that crowding is a "complicated

measurement and definitely open to different interpretation". He also felt that adding additional arch length should help with the child's complaints of pain. He also warned that as time passes the child's condition was changing and she would pass rapidly "out of interceptive into comprehensive treatment."

7. After review of this information, PATH denied coverage again and another hearing was scheduled for March 9, 2003. At that time PATH asked to set a time for its dental consultant to testify about his findings. A time was set aside but due to technical and time difficulties, the hearing did not take place. PATH asked instead to submit the opinion by affidavit and was given leave to do so. The affidavit was finally submitted on April 11, 2003.

8. PATH's dental consultant, who is not an orthodontist but is a well-qualified dentist, stated that he reviewed all the materials provided by the child's orthodontist, including models, photos and radiographs. He did not, however, examine the child herself. He agreed that the child met one minor criteria for blocked cuspids but did not meet the criteria for crowding. He determined that the degree of crowding was 7-8 mm based on the measurement of the upper and lower models using a periodontal measuring instrument which he has found to

be very reliable. He feels the models are a reliable representation of the way the teeth are positioned in the child's mouth. He reviewed the models again after receiving the December 3 and January 21 letters from the child's orthodontist and reached the same conclusion. After discussing the matter with a colleague, he determined that the criteria were not met.<sup>1</sup> It was also his opinion that the crowding was not of a level that typically causes pain as that usually occurs when the measurements exceed 10+ mm.

9. The professional opinion of the two experts in this case are in conflict. It is determined that the opinion of the orthodontist treating the child--that the crowding is 10+ mm and that she is experiencing pain--is likely more accurate than the opinion of PATH's dental consultant because he has personally seen the child's mouth on several occasions as well as the models he made. In addition, he is a specialist in orthodonture, the most relevant field, and PATH's consultant is not, as he specializes in general dentistry. Also, the consultant's statement that pain usually occurs only with

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<sup>1</sup> The dental consultant included in his affidavit information from a colleague who he says also measured the models. However, this information is hearsay and will not be included in the findings. Each medical person who reviews information must swear to his own written opinion to be admissible into evidence.

cases of 10+ mm of crowding further supports the orthodontist's view that the child's condition is more severe than PATH believes.

ORDER

The decision of PATH is reversed.

REASONS

PATH has adopted regulations for the coverage of orthodontics in the Medicaid program which include the following:

M622 Orthodontic Treatment

M622.1 Definition

Medically necessary orthodontic treatment involves the use of one or more prosthetic devices to correct a severe malocclusion. This definition is consistent with the federal definition found at 42 C.F.R. § 440.120(c).

M622.2 Eligibility for Care

Coverage for orthodontic services is limited to Medicaid recipients under the age of 21.

M622.3

Services that have been preapproved for coverage are limited to medically necessary orthodontic treatment, as defined in M622.4.

M622.4

To be considered medically necessary, the patient's condition must have one major or two minor malocclusions according to diagnostic criteria adopted by the

department's dental consultant or if otherwise medically necessary under EPSDT found at M100.

The major and minor criteria adopted by PATH are as follows:

Major: cleft palate; severe skeletal Class III; Posterior crossbite (3+ teeth); other severe cranio-facial anomaly.

Minor: Impacted cuspid, 2 blocked cuspids per arch (deficient by at least 1/3 of needed space); 3 Congenitally missing teeth, per arch (excluding third molars); Anterior open bite 3 or more teeth (4+mm); Crowding per arch (10+mm), Anterior crossbite (3+ teeth); Traumatic deep bite impinging on palate; Overjet 10+mm (measured from labial to labial).

The preponderance of the evidence shows that the petitioner's daughter's condition meets two of the above minor criteria: 2 blocked cuspids per arch (deficient by at least 1/3 of needed space) and crowding per arch (10+mm). As such her condition is defined as severe under PATH's own standards and she is thus eligible for payment of her orthodontic treatment under the Medicaid program for children. PATH's decision determining otherwise is reversed.

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